IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1134 of 2003
WITH
CIVIL APPLICATION No.3849 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INSURANCE CO LTD.
Versus
GANGAJI MANGALIYAJI MINA

Appearance:
1. First Appeal No. 1134 of 2003
MR PV NANAVATI for Petitioner No. 1
MR VIBHUTI NANAVATI for Petitioner No. 1
MR BG JANI for Respondent No. 1-2
MR GIRISH M DAS for Respondent No. 3-4
RULE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

This appeal under section 173 of the Motor Vehicles Act is filed by the appellant United India Insurance Co.Ltd., original opponent no.3 challenging the judgment and award passed in MACP No. 1110 of 2000 dated 21.2.2003 by Motor Accident Claims Tribunal (Auxi) Court No.16, Ahmedabad awarding the present respondents no.1 and 2 Rs. 1,98,000/- with 9% interest from the date of application till realisation with proportionate costs.

2. It may be stated that the claim petition arises out of an accident which took place on 27.5.1999. It is stated that the deceased Shankerbhai Gangaji Mina had gone on his bicyle to purchase vegetables and while he was proceeding towards home at about 4.30 p.m., one Matador bearing registration no. GJ-13-A-1682 came from behind and dashed with him as a result, the deceased sustained severe injuries on his head and he was taken to Civil Hospital. He was treated there as an indoor patient for ten days and thereafter he succumbed to the injuries. The Tribunal, after appreciating the evidence on record, found that the accident had taken place due to rash and negligent driving of present respondent no.3 and, therefore, the claimants were entitled to get compensation of Rs. 1,98,000/- against the claim of Rs.2 lacs.

3. It may be stated that the appellant Insurance Company has restricted its claim as far as the present appeal is concerned to Rs. 89,000/-.

4. After having heard the learned Counsel appearing for the parties and more particularly on the question of quantum, we feel that the amount of compensation of Rs. 1,98,000/- awarded by the Tribunal is on higher side. In our opinion, taking into consideration the fact that the deceased was a bachelor, instead of deducting 1/3rd from the amount of income, 2/3 rd amount was required to be deducted. Apart from that, the Tribunal has awarded Rs. 50,000/- towards loss to estate. That is also, prima facie, in our opinion, on higher side. In view of this, we suggested an amount of Rs. 1.35 lacs being the just and proper amount towards compensation to be paid to the claimants. Learned Counsel appearing for the appellant as well as the respondents no. 1 and 2 claimants, readily accepted our suggestion.

5. In this view of the matter, we modify the impugned award passed by the Motor Accident Claims Tribunal (Auxi) Ahmedabad in MACP No. 1110 of 2000 by passing the following order:

The appeal is partly allowed. The appellant is directed to pay Rs. 1.35 lacs to the present respondents no. 1 and 2 (original claimants) with proportionate costs and interest at the rate of 9% p.a. from the date of filing of the claim petition till realisation.

As the appellant has already deposited the amount of compensation as per the directions of the Tribunal, the Tribunal shall allow the present respondents no. 1 and 2 (original claimants) to withdraw the amount as per the present order. The excess amount, if any, shall be refunded to the appellant. An amount of Rs. 25000/- deposited by the appellant with the Registry of this Court, if not remitted, shall be transmitted to the Tribunal forthwith.

Appeal is partly allowed to the aforesaid extent with no order as to costs.

In view of the order passed in the main appeal, the Civil Application accordingly stands disposed of.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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